

**U.S. Department of the Interior
Bureau of Land Management**

Final Decision

(DOI-BLM-NV-L030-2011-0002 EA)

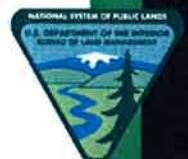
December 19, 2012

Grazing Term Permit Renewal for Newby Cattle Company (#2705036)
on the
Garden Spring (#01065), White Rock (#01078)
and Summit Spring (#01077) Allotments

Lincoln County, Nevada

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In Reply Refer to:
4160 (NVL0300)

DEC 20 2012

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FINAL DECISION

Newby Cattle Company (#2705036) on the
Garden Spring (#01065), White Rock (#01078) and Summit Spring (#01077) Allotments

Background Information

On October 15, 2012, the Finding of No Significant Impact (FONSI) for Newby Cattle Company on the Garden Spring, White Rock and Summit Spring Allotments was signed. The Final Environmental Assessment (DOI-BLM-NV-L030-2011-0002 EA), Finding of No Significant Impact (FONSI) and Standards Determination Documents are contained herein. This final decision is issued in accordance with 43 CFR § 4160.3.

The proposed action, associated with DOI-BLM-NV-L030-2011-0002 EA (EA), is to fully process and issue new term grazing permit to the aforementioned on the Garden Spring (#01065), White Rock (#01078) and Summit Spring (#01077) Allotments which encompass approximately 38,823, 32,916 and 18,035 acres, respectively.

The Newby Cattle Company term grazing permit was previously issued for the period 1/21/2010 – 2/28/2012, and was issued under the authority of Section 426, Public Law 111-8. The new grazing permit will reflect terms and conditions in accordance with the Final EA.

The Ely District Record of Decision and Approved Resource Management Plan (RMP) (August 2008) states as a goal (p. 85): "Manage livestock grazing on public lands to provide for a level of livestock grazing consistent with multiple use, sustained yield, and watershed function and health." It further states as an objective (p. 86): "To allow livestock grazing to occur in a manner and at levels consistent with multiple use, sustained yield, and the standards for rangeland health." Management Action LG-8 states, "Implement management actions for desert tortoise habitat contained in the 2008 Biological Opinion."

The Programmatic Biological Opinion (PBO) in Appendix D of the Ely District Record of Decision and Approved Resource Management Plan (RMP) (August 2008) identified the Garden Spring, White Rock and Summit Spring Allotments as allotments in desert tortoise habitat available for livestock grazing. It also states: "Allotments or portions of allotments in desert tortoise habitat outside ACECs will be managed according to seasonal utilization limits of 40% of annual growth on key forbs, perennial grasses and shrubs (March 1 to October 31)".

All three allotments contain habitat for the federally threatened Agassiz's desert tortoise (*Gopherus agassizii*). Of the three, only the Summit Spring Allotment contains designated desert tortoise critical habitat. None of the allotments contain desert tortoise Areas of Critical Environmental Concern (ACECs).

On September 28, 2011, the U.S. Fish and Wildlife Service (USFWS) received BLM's request for Section 7 consultation (a request to append the Programmatic Biological Opinion (PBO) as contained in the Ely RMP - 2008) for the federally threatened Agassiz's desert tortoise (*Gopherus agassizii*) through a BLM memorandum dated September 27, 2011. The request contained measures which will minimize potential effects to the desert tortoise.

In response to the request, the USFWS determined that the effects of the proposed action was within the scope of, and described in, the "Effects of the Action, Desert Tortoise" section of the PBO. They further determined that not only will most of these effects be minimized by BLM's proposed measures; but that the proposed changes in grazing management will reduce pressure on the vegetation needed for forage and cover, and will reduce the likelihood of tortoise or burrows being trampled.

In conclusion, after reviewing the current status of the desert tortoise, the environmental baseline for the action area, and the effects of the proposed action, it was the USFWS's biological opinion that the proposed action is not likely to jeopardize the continued existence of the threatened desert tortoise.

Fully processing and renewing the term grazing permit for Newby Cattle Company on the Garden Spring, White Rock and Summit Spring Allotments provides for a legitimate multiple use of public lands. The permit will include terms and conditions, for grazing use, that conform to grazing Guidelines which will aid in continuing to achieve the Resource Advisory Council Standards for Nevada's Mojave-Southern Great Basin Area in accordance with all applicable laws, regulations, and policies; and in accordance with Title 43 CFR § 4130.2(a) which states in part: "Grazing permits or leases shall be issued to qualified applicants to authorize use on the public lands and other lands under the administration of the Bureau of Land management that are designated as available for livestock grazing through land use plans".

Consequently, this decision specifically identifies management actions and terms and conditions deemed appropriate to achieve management and resource condition objectives. The proposed actions that were developed under this final decision execute management actions that will aid in ensuring that continued achievement of the Standards for Rangeland Health and multiple use objectives occur.

Conclusions of the Standards Determination Document

Current monitoring data were reviewed and an evaluation of the rangeland health was completed during the permit renewal process. As a result, a Standards Determination Document (SDD) was prepared (Appendix II of EA). The results of the findings, regarding the achievement or non-achievement of the Mojave-Southern Great Basin Area Standards for Rangeland Health for the aforementioned allotment are summarized in Tables 1, 2 and 3, below.

Table 1. Summary of Assessment of the Mojave-Southern Great Basin Area Standards for the Garden Springs Allotment

Standard	Status
1. Soils	Achieved
2. Riparian and Wetland Sites Standard	Achieved
3. Habitat and Biota Standard	Achieved

Table 2. Summary of Assessment of the Mojave-Southern Great Basin Area Standards for the White Rock Allotment

Standard	Status
1. Soils	Achieved
2. Riparian and Wetland Sites Standard	Achieved
3. Habitat and Biota Standard	Achieved

Table 3. Summary of Assessment of the Mojave-Southern Great Basin Area Standards for the Summit Springs Allotment

Standard	Status
1. Soils	Not Achieving the Standard, but making significant progress towards
2. Riparian and Wetland Sites Standard	Achieved
3. Habitat and Biota Standard	Not Achieving the Standard, but making significant progress towards

The data indicate that grazing is in conformance with all applicable Guidelines. However, the new term permit will include terms and conditions directed toward the achievement/continued achievement of both, the Standards and Guidelines for Grazing Administration and other pertinent land use objectives for livestock use.

In addition, Best Management Practices (BMPs) will be included, as Terms and Conditions, in the term grazing permit. Utilization objectives for the allotment are a quantification of the land use plan objectives and will be included as a BMP.

Consultation and Coordination

On December 22, 2009, the annual Ely BLM annual Consultation, Cooperation and Coordination letter was mailed to individuals and organizations who have previously expressed an interest in

federal actions on the Ely District. The letter solicited public requests, regarding various program areas, to be a 2010 interested public.

On January 8, 2010, a letter was sent to local Native American tribes initiating the consultation compliance process in accordance with Section 106 of the National Historic Preservation Act of 1966, as amended. The letter solicited input, requesting comments by February 8, 2010, for various permit renewals scheduled during 2010, including those on the Garden Spring, White Rock and Summit Spring Allotments. No comments were received.

On February 3, 2010 the Nevada Department of Wildlife was sent a copy of the proposed action via ftp. No comments were received.

On February 16, 2010 Newby Cattle Company (Authorization #2705036) was sent a letter informing them of the proposed term permit renewal process scheduled for their allotment during 2010 and arranged a meeting to discuss the proposed action. No comments were received.

On February 18, 2010, a BLM interdisciplinary team internally scoped the project and identified resource issues. Resources identified as potentially impacted included migratory birds, desert tortoise, and other special status animal species.

On April 14, 2010, the proposal to fully process the term permit, for Authorization 2705036, was posted on the Ely BLM internet site (http://www.blm.gov/nv/st/en/fo/ely_field_office.html).

On September 28, 2011, the U.S. Fish and Wildlife Service (USFWS) received BLM's request for Section 7 consultation (a request to append the Programmatic Biological Opinion (PBO) as contained in the Ely RMP - 2008) for the federally threatened Agassiz's desert tortoise (*Gopherus agassizii*) through a BLM memorandum dated September 27, 2011.

On October 19, 2011, the USFWS requested further information from the Caliente Field Office regarding the matter. On November 2, 2011, the USFWS received this information from the BLM. On November 21, 2011, a conference call was held between the USFWS and the BLM to discuss additional details outlined in the October 19, 2012 request for information. Through this conference, sufficient information was provided to address the USFWS's remaining questions.

Subsequently, the FWS provided a completed response to the request to append the PBO, dated January 9, 2012, which was received by the BLM on January 11, 2012.

On February 14, 2012, a meeting with the permittee (Authorization #2705036), was held, at the Caliente Field Office, to discuss the proposed action.

On April 30, 2012, the Preliminary EA was also posted on the NEPA Register webpage for a 15 day public review and comment period with the direct link to this webpage posted on the Ely BLM Homepage. No comments were received.

On May 1, 2012, the Preliminary EA was also submitted to the Nevada State Clearinghouse for a 15 day public review and comment period. Statements regarding general state water laws and

existing water rights were cited by the Division of Water Resources and received as comments by the BLM.

On May 4, 2012, a hard copy of the Newby Cattle Company term permit renewal Preliminary EA was mailed to all interested publics who had expressed an interest in grazing permit renewals during the 2012 calendar year. The public mailing List, as updated through May 3, 2012, was used. On May 18, 2012, comments were received by Western Watersheds, via email; a hard copy of the same comments was received on May 21, 2012.

Relevant changes to the EA were made as appropriate.

On October 15, 2012, the Proposed Decision was issued. A protest was received by Western Watersheds Project in the form of an email on November 5, 2012. A printed copy of the same protest was received by mail on November 26, 2012. The protest points were reviewed and were determined to be either conjecture, statements of opinion, unfounded claims of fact, or outside the scope of the proposed action.

LIVESTOCK MANAGEMENT DECISION

In accordance with 43 CFR §4130.3, §4130.3-1 and §4130.3-2, the term permit for Newby Cattle Company (#2703530) on the Garden Spring, White Rock, and Summit Spring Allotments will be changed according to the following:

FROM:

ALLOTMENT		LIVESTOCK		GRAZING PERIOD		** % Public Land	AUMs		
Name	Number	* Number	Kind	Begin	End		Active Use	Hist. Susp. Use	Permitted Use
Garden Spring	01065	348	C	10/1	5/31	100	2777	0	2777
Garden Spring	01065	4	H	10/1	5/31	100	32	0	32
White Rock	01078	361	C	10/1	5/31	100	2880	0	2880
Summit Spring	01077	90	C	10/1	5/31	100	715	0	715

* This number is approximate

** This is for billing purposes only.

TO

ALLOTMENT		LIVESTOCK		GRAZING PERIOD		** % Public Land	Active Use	AUMs		
Name	Number	* Number	Kind	Begin	End			Hist. Susp. Use	Voluntary Non-Use	Permitted Use
Garden Spring	01065	464	C	11/1	4/30	100	1666	0	1111	2777
Garden Spring	01065	5	H	11/1	4/30	100	19	0	13	32
White Rock	01078	481	C	11/1	4/30	100	1728	0	1152	2880
Summit Spring	01077	181	C	11/1	2/28***	100	429	0	286	715

* This number is approximate

** This is for billing purposes only

*** This is only until funding is available for a fence to be constructed which prevents livestock from accessing desert tortoise critical habitat. Upon the completion of such fence construction, the season of use will be changed to 11/1 to 4/30.

The renewal of the term grazing permit will be for a period of up to 10 years. This decision will be effective upon the decision becoming final or pending final determination on appeal. If the grazing privileges are transferred during this ten year period - with no changes to the terms and conditions of the permit - the new term permit will be issued for the remainder of the 10 year period.

In addition, the following will be added to the term grazing permit, as Terms and Conditions, for Newby Cattle Company (#2703530) on the Garden Spring, White Rock, and Summit Spring Allotment.

The following terms and conditions will be added to the term grazing permit for Authorization #2705036, regarding the use of voluntary nonuse AUMs (temporary nonrenewable grazing):

1. A total of 2,562 AUMs (40% of all active use AUMs) will be placed in voluntary nonuse: 1124 AUMs on Garden Spring Allotment; 1152 AUMs on White Rock Allotment; and, 286 AUMs on Summit Spring Allotment.

The 2,562 AUMs will be placed into voluntary nonuse for up to 10 years, or until subsequent allotment evaluations are conducted to determine that changes to the new permit are needed.

2. Under the discretion of the BLM, the AUMs placed in voluntary non-use will be temporarily reinstated as Active AUMs whenever resource conditions result in a significant increase in annual forage production; thereby, dictating a need for fine fuels reduction (e.g., when precipitation events result in a flourishing of annual grasses).
3. The use of voluntarily non-use AUMs will be determined on an annual basis, and be available through temporary nonrenewable grazing (§ 4110.3-1 (a)). Stocking levels and grazing management practices will be evaluated prior to any anticipated livestock turnout.

4. The permittee must submit an application for any temporary reinstatement of voluntary non-use (temporary nonrenewable grazing). Any applications for voluntary non-use must be evaluated by an appropriate BLM team of specialists, and approved by the Authorized Officer.
5. The voluntary reduction of 40% of the active AUMs is not a permanent revocation of 40% of the current grazing privileges.

The following term and condition will be added to the term grazing permit regarding the season of use for the Summit Spring Allotment:

6. For the Summit Spring Allotment, the indicated season of use (11/1 – 2/28) will remain in effect until funding is available for a fence to be constructed which prevents livestock access into designated desert tortoise critical habitat within the allotment. Following fence construction, the season of use will be changed from 11/1 - 2/28 to 11/1 – 4/30.

To address the Clover Mountain and Mormon Mountain Wilderness Areas, created through the Lincoln County Conservation Recreation and Development Act P.L. 108-424, the following term and condition will be added to comply with the Wilderness Act of 1964 (P.L. 88-577) (see Congressional Grazing Guidelines in Appendix V of the EA):

7. No motorized access is permitted within the designated Mormon Mountain or Clover Mountain Wilderness Areas without approval of the Field Manager. Motorized access may be permitted for emergency situations, or where practical alternatives for reasonable grazing management needs are not available and such motorized use will not have an adverse impact on the natural environment.

The following Best Management Practices will be added to the term grazing permit for Authorization #2705036. Utilization objectives for the allotment are a quantification of the land use plan objectives and will be included as a BMP:

8. Under the discretion of the BLM, the permittee will use multiple watering locations within each allotment, during any given grazing season; watering locations will be used in a manner which will yield maximum livestock distribution within each allotment; and herding will be used where and when deemed necessary. Watering locations will include wells, reservoirs, spring developments, and water hauls. All water use will be in accordance with Nevada State Law.
9. Allowable Use Levels on current year's growth of upland vegetation (grasses, forbs and shrubs) within the Garden Spring, White Rock and Summit Spring Allotments, during the authorized grazing use period will not exceed 40%.

The following terms and conditions, from the *Programmatic Biological Opinion for the Bureau of Land Management's Ely District Resource Management Plan* (File No. 84320-2008-F-0078) (RMP 2; pp. 132-133), will be included in the term grazing permit to minimize incidental take of desert tortoises that may result from the implementation of programs in general:

10. Prior to initiation of an activity within desert tortoise habitat, a desert tortoise awareness program shall be presented to all personnel who will be onsite, including but not limited to contractors, contractors' employees, supervisors, inspectors, and subcontractors. This program will contain information concerning the biology and distribution of the desert tortoise and other sensitive species, their legal status and occurrence in the project area; the definition of "take" and associated penalties; speed limits; the terms and conditions of this biological opinion including speed limits; the means by which employees can help facilitate this process; responsibilities of workers, monitors, biologists, etc.; and reporting procedures to be implemented in case of desert tortoise encounters or noncompliance with this biological opinion.
11. Tortoises discovered to be in imminent danger during projects or activities covered under this biological opinion, may be moved out of harm's way.
12. Desert tortoises shall be treated in a manner to ensure they do not overheat, exhibit signs of overheating (e.g., gaping, foaming at the mouth, etc.), or are placed in a situation where they cannot maintain surface and core temperatures necessary to their well-being. Desert tortoises will be kept shaded at all times until it is safe to release them. No desert tortoise will be captured, moved, transported, released, or purposefully caused to leave its burrow for whatever reason when the ambient air temperature is above 95°F. Ambient air temperature will be measured in the shade, protected from wind, at a height of two inches above the ground surface. No desert tortoise will be captured if the ambient air temperature is anticipated to exceed 95°F before handling and relocation can be completed. If the ambient air temperature exceeds 95°F during handling or processing, desert tortoises will be kept shaded in an environment that does not exceed 95°F and the animals will not be released until ambient air temperature declines to below 95°F.
13. Desert tortoises shall be handled by qualified individuals. For most projects, an authorized desert tortoise biologist will be onsite during project activities within desert tortoise habitat. Biologists, monitors, or anyone responsible for conducting monitoring or desert tortoise field activities associated with the project will complete the Qualifications Form (Appendix D) and submit it to the USFWS for review and approval as appropriate. The USFWS should be allowed 30 days for review and response.
14. A litter-control program shall be implemented to minimize predation on tortoises by ravens drawn to the project site. This program will include the use of covered, raven-proof trash receptacles, removal of trash from project areas to the trash receptacles following the close of each work day, and the proper disposal of trash in a designated solid waste disposal facility. Appropriate precautions must be taken to prevent litter from blowing out along the road when trash is removed from the site. The litter-control program will apply to all actions. A litter-control program will be implemented by the responsible federal agency or their contractor, to minimize predation on tortoises by ravens and other predators drawn to the project site.

The following terms and conditions, also from the *Programmatic Biological Opinion*

(RMP 7; pp. 138-140), will be included in the term grazing permit to minimize incidental take of desert tortoises that may result from permitting livestock grazing:

15. Livestock grazing may continue in desert tortoise habitat under the previous conditions established under the Caliente Management Framework Plan (MFP) Amendment until such time the term permit come up for renewal based on the existing permit expiration dates. Those allotments or portion of allotments in desert tortoise critical habitat will be a priority for review and issuance of term permit. During this interim period for grazing within desert tortoise habitat outside the Mormon Mesa, Kane Springs, and Beaver Dam Slope ACECs: Livestock use may occur from March 1 to October 31, as long as forage utilization management levels are monitored and do not exceed 40% on key perennial grasses, shrubs and perennial forbs; and between November 1 and February 28/29, provided forage utilization management levels are monitored and do not exceed 50% on key perennial grasses and 45% on key shrubs and perennial forbs. If the utilization management levels are reached, livestock will be moved to another location within the allotment or taken entirely off the allotment. No livestock grazing will occur in desert tortoise critical habitat March 1 through October 31.
16. Livestock grazing in desert tortoise habitat shall be managed in accordance with the most current version of the Desert Tortoise Recovery Plan, including allotments or portions of allotments that become vacant and occur within desert tortoise critical habitat outside of ACECs. Grazing may continue in currently active allotments until such time they become vacant. BLM will work with the permittees of active allotments to implement changes in grazing management to improve desert tortoise habitat which may include use of water, salt and mineral licks, or herding to move livestock; changes in season of use and/or stocking rates; installation of exclusionary fences; reconfiguring pasture or allotment boundaries; and retiring pastures or allotments.
17. When BLM proposes to issue a term permit or other type of grazing authorization, BLM shall provide the following to the USFWS with their request to append the action to this biological opinion:
 - An allotment-level assessment of current conditions (relative to listed species habitat); if unknown, a description of, and timeframe for actions BLM will implement to collect such information;
 - a plan and schedule for monitoring listed species habitat on the allotment;
 - a description of the grazing system and how it will minimize conflicts with listed species habitat;
 - proposed actions or remedies (e.g., reduce utilization levels, reduce AUMs, limit season-of-use) if listed species habitat has not attained the goals for the allotment; and
 - other information requested by the USFWS that is necessary to conclude activity-level consultation.
18. BLM and USFWS will cooperatively develop livestock grazing utilization levels or other thresholds, as appropriate for each of the listed species. These levels or thresholds shall be incorporated into each of the allotment term permit for those allotments that overlap with habitat for the listed species.

19. The permittee shall be required to take immediate action to remove any livestock that move into areas unavailable for grazing. If straying of livestock becomes problematic, BLM, in consultation with the USFWS, will take measures to ensure straying is prevented.
20. All vehicle use in listed species habitat associated with livestock grazing, with the exception of range improvements, shall be restricted to existing roads and trails. Permittees and associated workers will comply with posted speed limits on access roads. No new access roads will be created.
21. Use of hay or grains as a feeding supplement shall be prohibited within grazing allotments. Where mineral and salt blocks are deemed necessary for livestock grazing management they will be placed in previously disturbed areas at least one half mile from riparian areas wherever possible to minimize impacts to flycatchers and listed fishes and their habitat. In some cases, blocks may be placed in areas that have a net benefit to tortoise by distributing livestock more evenly throughout the allotment, and minimizing concentrations of livestock that result in habitat damage. Water haul sites will also be placed at least one half mile from riparian areas.
22. Site visits shall be made to active allotments by BLM rangeland specialists and other qualified personnel, including USFWS biologists, to ensure compliance with the terms and conditions of the grazing permit. Any item in non-compliance will be rectified by BLM and permittee, and reported to the USFWS.
23. Livestock levels shall be adjusted to reflect significant, unusual conditions that result in a dramatic change in range conditions (e.g., drought and fire) and negatively impact the ability of the allotment to support both listed species and cattle.

In relation to grazing, there will be no additional terms and conditions needed for management practices to conform to guidelines to either strive for the achievement or maintain the achievement of the Standards for Rangeland Health.

Standard Operating Terms and Conditions:

In accordance with 43 CFR § 4130.3, § 4130.3-1 and § 4130.3-2, the following will also be included as terms and conditions in the term grazing permit for Newby Cattle Company on the Garden Spring, White Rock, and Summit Springs Allotments.

1. Livestock numbers identified in the Term Grazing Permit are a function of seasons of use and permitted use. Deviations from those livestock numbers and seasons of use may be authorized on an annual basis where such deviations are consistent with multiple-use objectives. Such deviations will require an application and written authorization from the authorized officer prior to grazing use.
2. The authorized officer is requiring that an actual use report (Form 4130-5) be submitted within 15 days after completing your annual grazing use.

3. Grazing use will be in accordance with the Standards and Guidelines for Grazing Administration. The Standards and Guidelines have been developed by the respective Resource Advisory Council and approved by the Secretary of the Interior on February 12, 1997. Grazing use will also be in accordance with 43 CFR Subpart 4180 - Fundamentals of Rangeland Health and Standards and Guidelines for Grazing Administration.
4. If future monitoring data indicates that Standards and Guidelines for Grazing Administration are not being met, the permit will be reissued subject to revised terms and conditions.
5. The permittee must notify the authorized officer by telephone, with written confirmation, immediately upon discovery of any hazardous or solid wastes as defined in 40 CFR Part 261.
6. The permittee is responsible for all maintenance of assigned range improvements including wildlife escape ramps for both permanent and temporary water troughs.
7. When necessary, control or restrict the timing of livestock movement to minimize the transport of livestock-borne noxious weed seeds, roots, or rhizomes between weed-infested and weed-free areas.
8. Livestock will be moved to another authorized pasture (where applicable) or removed from the allotment before utilization objectives are met or no later than 5 days after meeting the utilization objectives. Any deviation in livestock movement will require authorization from the authorized officer.
9. The placement of mineral or salt supplements will be a minimum distance of 1/2 mile from known water sources, riparian areas, winterfat dominated sites, sensitive sites, populations of special status plant species, and cultural resource sites. Mineral and salt supplements will also be one mile from active sage-grouse leks. Placing supplemental feed (i.e. hay, grain, pellets, etc.) on public lands without authorization is prohibited.

Rationale

A Summary of the Assessment of the Mojave-Southern Great Basin Area Standards for the Garden Spring, White Rock, and Summit Spring Allotments is displayed in Tables 1, 2 and 3, above (Tables 1.2-1, 1.2-2 and 1.2-3 of the Environmental Assessment). Monitoring data review and assessment findings indicate that all three Standards are being achieved on the Garden Spring and White Rock Allotments.

Findings also indicate that Standard 2 is being achieved for the Summit Spring Allotment; contrastingly, data shows that Standards 1 and 3 are not being achieved on this allotment. However, the reason for non-achievement is due to wildland fire as analyzed in the SDD.

The data also indicate that grazing is in conformance with all applicable Guidelines.

Stocking rate calculations were not determined for any of the allotments because the primary forage, during the growing season, is composed of annual grass species which fluctuate greatly depending on annual weather patterns. Consequently, annual use on the allotments has frequently been significantly below the combined Total Active AUMs of the permit - with an average of 43% actual use of permitted AUMs over the past 10 years - due to voluntary non-use as a result of fluctuations in annual production.

However, utilization transects showed slight to moderate use levels, indicating that the grazing system is meeting proper utilization objectives. This also indicates that the 10-year average actual use levels are appropriate for the current conditions, and are supporting vegetation production at levels that are sustainable to grazing while maintaining or improving ecological function. During an average year, grazing 100% of Total Active Use could have the potential to exceed the moderate use level (45%). However, during years of high annual grass production where production can exceed 1000 lbs. per acre, such as during 2005 which resulted in catastrophic wildfires, grazing 100% of Total Active AUMs will not exceed the moderate use level (45%), on perennial forage, and could aid in reducing fuel loading, fire intensity and severity.

The establishment of these levels allows for better management of rangeland resources, because they are tied to forage availability rather than a set AUM amount. These levels allow for flexibility to accommodate adaptive management, annual range conditions; prevent overgrazing; and safeguard residual forage for wildlife habitat, plant recovery and productivity, and watershed function.

However, the current season of use (10/1 – 5/31) doesn't allow for the potential of periodic spring rest during portions of the critical growing period for plants. Consequently, there is the potential that it will not allow for the type of root mass and subsequent above ground biomass development which lends itself to healthy, vigorous growing plants; especially grasses. It is believed that annual spring grazing could potentially steadily diminish the root systems of the grasses, causing above ground biomass to correspondingly diminish over time¹.

Therefore, shortening the season of use on all three allotments will result in grazing which neither occurs during the latter portion of the critical growing period for cool season plants, nor during a portion of the critical growing period for warm season plants. This will favor plant growth and seed set requirements in both, warm season and cool season grasses. It will also allow the potential for grazed cool season plants, which may have begun some spring growth, to continue growth which will aid in allowing such plants: to develop above ground biomass to protect soils and provide desirable perennial cover for wildlife; to contribute to litter cover; and to continue to develop root masses which will lend itself to improved carbohydrate storage for vigor and reproduction.

Consequently, the benefits to plant physiology, added soil protection and wildlife cover will be enhanced; the plant quality and volume of existing perennial forage species will be promoted; and the potential for loss of desired plant species, due to repeated spring grazing during the

¹ Dietz, Harland E. 1989. Grass: the Stockman's Crop, How to Harvest More of It. Special Report. Sunshine Unlimited, Inc. 15 pp.

critical growing period, will decline. Summarily, this will impact the desired forage base in a positive manner and result in an improvement of overall range condition.

Retaining the current total Active Use AUMs, and allowing for voluntary non-use of a portion those AUMs (temporary nonrenewable grazing under § 4110.3-1 (a)), will also allow the ability to increase grazing use during years of high annual grass production while targeting weed species when they are most palatable and, consequently, vulnerable to grazing. This will also help reduce fuel loading, thereby lending itself to reduced fire frequency, intensity and severity while facilitating burn area recovery.

Existing permanent watering locations spread throughout the allotments provide a means to help control livestock. Rotating livestock throughout the allotments by providing water at different locations at different times, during a grazing season, can improve livestock distribution to achieve a more uniform utilization level within the allotment; reduce the potential for unacceptable utilization levels; and provide benefits to wildlife, regarding not only forage and cover, but additional water availability during the livestock grazing season.

The installation and maintenance of bird ladders will allow a means of escape for wildlife.

It is anticipated and reasonable to expect, then, that the Standards being met on the Garden Spring and White Rock Allotments will continue to be achieved, while significant progress towards the achievement of Standards 1 and 3 will continue on the Summit Spring Allotment.

The Proposed Action will add other terms and conditions to the permit that will minimize incidental take of desert tortoises; aid in reducing fuel loading, fire intensity and severity; satisfy the Wilderness Act of 1964; and aid in achieving/maintaining the Mojave-Southern Great Basin Standards.

Land Use Plan Conformance

The proposed action is in conformance with the Ely District Record of Decision and Approved Resource Management Plan (RMP) dated August 20, 2008. The proposed action is specifically provided for in the following Management Decisions: “LG-1: Make approximately 11,246,900 acres and 545,267 animal unit months available for livestock grazing on a long-term basis. LG-5: Maintain the current preference, season-of-use, and kind of livestock until the allotments that have not been evaluated for meeting or making progress toward meeting the standards or are in conformance with the policies are evaluated. Depending on the results of the standards assessment, maintain or modify grazing preference, seasons-of-use, kind of livestock, and grazing management practices to achieve the standards for rangeland health. Changes, such as improved livestock management, new range improvement projects, and changes in the amount and kinds of forage permanently available for livestock use, can lead to changes in preference, authorized season-of-use, or kind of livestock. Ensure changes continue to meet the RMP goals and objectives, including the standards for rangeland health.”

This decision also complies with BLM Nevada Instruction Memorandum (IM) No. NV-2006-034 which provides guidance to facilitate the preparation of grazing permit renewal

Environmental Assessments (EAs) as per the requirement set forth in BLM Washington Office IMs WO 2003-071 and WO 2004-126.

AUTHORITY: The authority for this decision is contained in Title 43 of the Code of Federal Regulations (2004), which states in pertinent part(s):

§ 4130.2 Grazing Permits and Leases

- (a) States in part: “Grazing permits or leases shall be issued to qualified applicants to authorize use on the public lands and other lands administered by the Bureau of Land Management that are designated as available for livestock grazing through land use plans.”

§ 4130.3: “Livestock grazing permits and leases shall contain terms and conditions determined by the authorized officer to be appropriate to achieve the management and resource condition objectives for the public lands and other lands administered by the Bureau of Land Management, and ensure conformance with the provisions of subpart 4180 of this part.”

§ 4130.3-1 Mandatory terms and conditions.

- (a) “The authorized officer shall specify the kind and number of livestock, the period(s) of use, the allotment(s) to be used, and the amount of use, in animal unit months, for every grazing permit or lease. The authorized livestock grazing use shall not exceed the livestock carrying capacity of the allotment.
- (b) All permits and leases shall be made subject to cancellation, suspension, or modification for any violation of these regulations or of any term or condition of the permit or lease.
- (c) Permits and leases shall incorporate terms and conditions that ensure conformance with subpart 4180 of this part.”

§ 4130.3-2 Other Terms and Conditions

“The authorized officer may specify in grazing permits or leases other terms and conditions which will assist in achieving management objectives, provide for proper range management or assist in the orderly administration of the public rangelands.”

§ 4160.3 Final Decisions.

- (a) “In the absence of a protest, the proposed decision will become the final decision of the authorized officer without further notice unless otherwise provided in the proposed decision.

- (b) Upon the timely filing of a protest, the authorized officer shall reconsider her/his proposed decision in light of the protestant's statement of reasons for protest and in light of other information pertinent to the case. At the conclusion to her/his review of the protest, the authorized officer shall serve her/his final decision on the protestant or her/his agent, or both, and the interested public.
- (c) A period of 30 days following receipt of the final decision, or 30 days after the date the proposed decision becomes final as provided in paragraph (a) of this section, is provided for filing an appeal and petition for stay of the decision pending final determination on appeal. A decision will not be effective during the 30-day appeal period, except as provided in paragraph (f) of this section. See Sec. Sec. 4.21 and 4.470 of this title for general provisions of the appeal and stay processes.”

§ 4180.1

Fundamentals of Rangeland Health and Standards and Guidelines for Grazing Administration.

“The authorized officer shall take appropriate action under subparts 4110, 4120, 4130, and 4160 of this part as soon as practicable but not later than the start of the next grazing year upon determining that existing grazing management needs to be modified to ensure that the following conditions exist.

- (a) Watersheds are in, or are making significant progress toward, properly functioning physical condition, including their upland, riparian-wetland, and aquatic components; soil and plant conditions support infiltration, soil moisture storage, and the release of water that are in balance with climate and landform and maintain or improve water quality, water quantity, and timing and duration of flow.
- (b) Ecological processes, including the hydrologic cycle, nutrient cycle, and energy flow, are maintained, or there is significant progress toward their attainment, in order to support healthy biotic populations and communities.
- (c) Water quality complies with State water quality standards and achieves, or is making significant progress toward achieving, established BLM management objectives such as meeting wildlife needs.
- (d) Habitats are, or are making significant progress toward being, restored or maintained for Federal threatened and endangered species, Federal Proposed, Category 1 and 2 Federal candidate and other special status species.”

Appeal

In accordance with 43 CFR §§ 4.470 and 4160.4, any person who wishes to appeal or seek a stay of a BLM grazing decision must follow the requirements set forth in 4.470 through 4.480 of this title. The appeal or petition for stay must be filed with the BLM office that issued the decision within 30 days after its receipt or within 30 days after the proposed decision becomes final as provided in § 4160.3 (a).

The appeal and any petition for stay must be filed at the office of the authorized officer:

Victoria Barr
Field Manager
Caliente Field Office
1400 S. Front Street
Caliente, NV 89008

Within 15 days of filing the appeal and any petition for stay, the appellant also must serve a copy of the appeal and any petition for stay on any person named in the decision and listed at the end of the decision, and on the Office of the Solicitor, Regional Solicitor, Pacific Southwest Region, U.S. Department of the Interior, 2800 Cottage Way, Room E-1712, Sacramento, California 95825-1890.

Pursuant to 43 CFR 4.471(c), a petition for stay, if filed, must show sufficient justification based on the following standards:

- (1) The relative harm to the parties if the stay is granted or denied;
- (2) The likelihood of the appellant's success on the merits;
- (3) The likelihood of immediate and irreparable harm if the stay is not granted; and,
- (4) Whether the public interest favors granting the stay.

43 CFR 4.471(d) provides that the appellant requesting a stay bears the burden of proof to demonstrate that a stay should be granted.

Any person named in the decision from which an appeal is taken (other than the appellant) who wishes to file a response to the petition for a stay may file with the Hearings Division in Salt Lake City, Utah, a motion to intervene in the appeal, together with the response, within 10 days after receiving the petition. Within 15 days after filing the motion to intervene and response, the person must serve copies on the appellant, the Office of the Solicitor and any other person named in the decision (43 CFR 4.472(b)).

At the conclusion of any document that a party must serve, the party or its representative must sign a written statement certifying that service has been or will be made in accordance with the applicable rules and specifying the date and manner of such service (43 CFR 4.422(c)(2)).

Sincerely,



Victoria Barr
Field Manager
Caliente Field Office

Enclosure

cc:

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Nevada State Clearinghouse

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FINDING OF NO SIGNIFICANT IMPACT

Newby Cattle Company (#2705036) on the Garden Spring (#01065), White Rock (#01078) and Summit Spring (#01077) Allotments

DOI-BLM-NV-L030-2011-0002 EA

I have reviewed Environmental Assessment (EA) (DOI-BLM-NV-L030-2011-0002 EA). After consideration of the environmental effects as described in the EA, and incorporated herein, I have determined that the proposed action associated with fully processing the term permit renewal identified in the EA will not significantly affect the quality of the human environment and that an Environmental Impact Statement (EIS) is not required. Environmental Assessment DOI-BLM-NV-L030-2011-0002 EA has been reviewed through the interdisciplinary team process.

Rationale:

I have determined the proposed action is in conformance with the Ely District Record of Decision and Approved Resource Management Plan (RMP/ROD) to manage the public lands administered by the Bureau of Land Management's Ely District Office (August 20, 2008).

This proposed term permit renewal will be effective in improving/maintaining rangeland health and watershed condition on public lands within the Garden Spring, White Rock and Summit Spring Allotments. Through the introduction and implementation of the sound livestock management practices associated with the Proposed Action, progression will be made towards achievement of Standards and conformance to the Guidelines for Grazing Administration.

The finding and conclusion of no significant impact is based on my consideration of the Council on Environmental Quality's (CEQ) criteria for significance (40 CFR 1508.27), both with regard to the context and the intensity of impacts described in the EA.

Context:

The Garden Spring Allotment is 38,823 public land acres in Lincoln County, and is located 35 miles south of Caliente, Nevada (Appendix I). In 2004, approximately 2% (924 acres) of the allotment was designated as part of the Clover Mountain Wilderness Area. This occurs in a small portion of the northwest corner of the allotment.

The White Rock Allotment is 32,916 public land acres in Lincoln County, and is located 35 miles south of Caliente, NV (Appendix I). In 2004, the White Rock Allotment had approximately 25% (7,836 acres) of the allotment was designated as part of the Mormon Mountain Wilderness Area. This occurs in the southwest corner of the allotment.

The Summit Spring Allotment is 18,035 public land acres in Lincoln County and is located 35 miles south of Caliente, Nevada (Appendix I). No designated wilderness occurs within the Summit Spring Allotment.

Portions of the Garden Spring and White Rock Allotments contain desert tortoise habitat. The entire Summit Spring Allotment is located within desert tortoise habitat with 6% (2,799 acres) of its area, located in the southeast portion of the allotment, designated as desert tortoise critical habitat in 1994. None of the allotments contain desert tortoise Areas of Critical Environmental Concern (ACECs).

None of the allotments, and none of their portions, are associated with Wild Horse Herd Management Areas (HMA).

Lincoln County is sparsely populated, with approximately 5,345 (2010 census) people living mostly within five towns. Although the acreage involved is extensive, impacts from livestock grazing are dispersed, and compatible with the rural, agricultural setting throughout most of the County.

Intensity:

1) *Impacts that may be both beneficial and adverse.*

The Environmental Assessment considered both, beneficial and adverse impacts of the proposed action. None of the impacts disclosed in the EA approach the threshold of significance (i.e., exceeding air or drinking water quality standards, contributing a decline in the population of a listed species, etc.). None of the resource impacts are intensely adverse or beneficial.

2) *The degree to which the proposed action affects public health or safety.*

The Proposed Action will not result in potentially substantial or adverse impacts to public health and safety.

3) *Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.*

The Ely RMP EIS has evaluated the impacts of livestock grazing on natural resources and unique geographic characteristics found on public lands throughout the district, and decisions were made to eliminate grazing in areas where the impacts could cause unacceptable degradation to natural resources and unique geographic characteristics. No site specific concerns were identified in the EA.

There are no parks, wetlands, wild and scenic rivers or ecologically critical areas (ACECs) found within the allotments.

Designated prime and unique farmland is not found within any of the allotments.

Historic and cultural resources identified in the proposed area were reviewed and analyzed. No effects to unique characteristics of the geographic area such as proximity to historic or cultural resources were identified.

- 4) ***The degree to which the effects on the quality of the human environment are likely to be highly controversial.***

Whereas, it may be controversial to continue to permit livestock grazing on public lands in spite of the effects, there is little controversy as to what they are. The Ely RMP EIS analyzed several alternatives with various effects to conflicting uses of natural resources and disclosed these effects. Decisions were made to continue livestock grazing in areas deemed appropriate.

- 5) ***The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.***

The effects of livestock grazing are well known and documented. Management practices are employed to meet resource objectives and maintain or achieve rangeland health. The Ely RMP EIS analyzed the effects of livestock grazing throughout the district and has eliminated grazing in areas where unique environmental risks could occur.

- 6) ***The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration.***

The Proposed Action will not establish a precedent for future actions with significant effects or represent a decision in principle about a future consideration. Renewing the grazing permit does not establish a precedent for other Rangeland Health Assessments and Decisions. Any future actions or projects - within either the proposed action area or surrounding areas - will be analyzed and evaluated as a separate action; and, independently of the current proposed action.

- 7) ***Whether the action is related to other actions with individually insignificant but cumulatively significant impacts.***

No significant cumulative impacts have been identified in the EA. Past, present, and reasonably foreseeable future actions in the cumulative impact assessment area will not result in cumulatively significant impacts. For any actions that may be proposed in the future, further environmental analysis, including the assessment of cumulative impacts, will be required.

- 8) ***The degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the NRHP or may cause loss or destruction of significant scientific, cultural, or historical resources.***

A Findings for Cultural Resources Needs Assessment was completed February 3, 2011. Findings indicate that there are no identified Traditional Cultural Properties within the area of potential effect of this project. Therefore, the proposed action will not cause the loss or destruction of

significant scientific, cultural or historical resources. This project will have no effect on any Cultural ACECs. The proposed action is a "Section 106 No Effect" exclusion.

It should be noted that all range improvements, surface disturbing projects, and changes in grazing patterns that will concentrate grazing and may create impacts related to this permit will be subject to Section 106 review and, if needed, SHPO consultation as per the BLM Nevada's implementation of the Protocol for cultural resources.

9) *The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the ESA of 1973.*

The BLM is required by the Endangered Species Act of 1973, as amended, to ensure that no action on the public lands jeopardizes a threatened, endangered, or proposed species.

Wildlife species (plant and animal) that occur in or near the project area are listed in Appendix V of the EA.

Portions of the Garden Spring and White Rock Allotments contain habitat for the federally threatened Agassiz's desert tortoise (*Gopherus agassizii*). The entire Summit Spring Allotment is located within desert tortoise habitat with 6% (2,799 acres) of its area, located in the southeast portion of the allotment, designated as desert tortoise critical habitat in 1994. None of the allotments contain desert tortoise Areas of Critical Environmental Concern (ACECs). Formal Section 7 consultation for this species, between the Bureau of Land Management and the United States Fish and Wildlife Service (USFWS), was completed on January 9, 2012, which was received by the BLM on January 11, 2012.

After reviewing the current status of the desert tortoise, the environmental baseline for the action area, and the effects of the proposed action, it was the USFWS's biological opinion that the proposed action was within the scope of the Programmatic Biological Opinion contained in Ely's District Record of Decision and Approved Resource Management Plan (August 2008); and was, therefore, not likely to jeopardize the continued existence of the Mojave desert tortoise.

10) *Whether the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment.*

The proposed action will not violate or threaten to violate any Federal, State, or local law or requirement imposed for the protection of the environment.



Victoria Barr
Field Manager
Caliente Field Office

12.20.12

Date